

EXHIBIT 22

Page 1

IN THE UNITED STATE DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

No. 2:18cv530

CSX TRANSPORTATION, INC.,
individually and on behalf of NORFOLK
& PORTSMOUTH BELT LINE RAILROAD
COMPANY,

Plaintiff,

v.

NORFOLK SOUTHERN RAILWAY COMPANY,
et al.,

Defendants.

Remote Proceedings

January 8, 2021

9:31 a.m. - 3:50 p.m.

VIDEO DEPOSITION OF FREDRIK ELIASSON
(via Teleconference)

Taken before SUZANNE VITALE, R.P.R., F.P.R.
and Notary Public for the State of Florida at Large,
pursuant to Notice of Taking Deposition filed in the
above cause.

Job No. CS4380445

1 the subsidy was.

2 Q. Understood. In this 2009-2010 time
3 frame -- let me back up.

4 There is a phrase in this case,
5 "double-stack clearance." What does that mean to
6 you?

7 A. It means to me that you have the ability
8 to take a train with two containers high so that you
9 have the clearance to take the train from
10 Hampton Roads, for example, to these discretionary
11 points.

12 Q. Double -- you can double-stack the
13 containers, right?

14 A. Two containers high, that allows,
15 obviously, you to essentially handle twice as much
16 cargo on one train versus single stack.

17 Q. And railroads want to have double-stacking
18 capabilities, right?

19 A. That is correct.

20 Q. And can you give me the reasons why that's
21 beneficial to a railroad?

22 A. It's -- economically, it allows us to
23 compete at a different rate point. And if one
24 railroad has it over another, that gives that
25 railroad a competitive advantage. It's not all of

1 it, but it certainly gives them a competitive
2 advantage.

3 Q. And it's in a railroad's interest to put
4 as many containers on a railcar as possible when
5 moving that or making that movement, right?

6 A. That's correct.

7 Q. In 2009 or 2010, was any part of CSX's
8 network or -- allow -- did it allow for double-stack
9 movement?

10 A. There were many parts of CSX's network
11 that allowed for double-stack movement. And there
12 were some ports, specifically coming out of Norfolk,
13 that at that point did not allow for it, which is
14 why we started this very significant undertaking,
15 public-private partnership to do double-stack
16 clearance on that line, I think very similar to what
17 Norfolk Southern did as well.

18 Q. So in 2009, if I understand you correctly,
19 CSX did not have double-stack clearance coming out
20 of the Hampton Roads ports; is that right?

21 A. I think that was correct. And I don't
22 think at that point -- I'm not sure that
23 Norfolk Southern had that either. I think their
24 Crescent Corridor or Heartland Corridor, whatever it
25 was called, also was -- was being worked on at that

1 the lack of access, I should say.

2 Q. And just so we're clear -- I think this is
3 consistent with your prior testimony -- the access
4 related to the cost of access, right?

5 A. One more time.

6 Q. Sure. You would agree with me that CSX
7 had the ability to access NIT using the Belt Line,
8 right?

9 A. That was my understanding. There was some
10 operational challenges that had to be ironed out in
11 terms of the track issue right over NS and some of
12 the curvature. But the big challenge that we were
13 facing at this point was really around economic
14 access.

15 Q. Okay. If you could open up folder number
16 2.

17 A. I have it open.

18 Q. And this is going to be Exhibit 5 to your
19 deposition.

20 (Thereupon, the referred-to document was
21 marked for identification as Plaintiff's Exhibit 5.)

22 BY MR. LACY:

23 Q. It looks to be an e-mail exchange amongst
24 you and Ms. Coleman and other board members.

25 The first e-mail in time looks to be an

1 and ultimately, pay some dividend back.

2 BY MR. LACY:

3 Q. And a 6 percent dividend, right?

4 A. Correct.

5 Q. So in other words, the Belt Line is
6 supposed to set its rates to the point where it
7 covers cost and allows for a 6 percent dividend,
8 correct?

9 A. Correct.

10 MR. MCFARLAND: Object to the -- object to
11 the form.

12 Without waiving, the witness may answer.

13 THE WITNESS: And -- and for the mutual
14 benefit to facilitate traffic in and out of the
15 facilities that it serves.

16 BY MR. LACY:

17 Q. I get that. I'm just trying to get a
18 sense from a financial perspective what the
19 operating agreement for the Belt Line states.

20 All right. If you could, Mr. Armbrust
21 {sic}, open up the folder marked 3.

22 A. Mr. Armbrust or Mr. Eliasson?

23 Q. I'm sorry. Mr. Eliasson. I was just
24 looking at Mr. Armbrust's name.

25 A. I have opened it.

1 A. I mean, in this instance, I did not think
2 that this was in any way, shape, or form a conflict
3 because what CSX was trying to do was to gain access
4 to the facility. What NPBL was there to do was to
5 serve the members' interests in terms of access to
6 facilities.

7 We were trying to put a proposal forth
8 that gave economic profit that was sufficient for
9 them to do the service. So I never saw a conflict
10 between the two hats that I was wearing.

11 Q. Understood. All right. In terms of
12 Exhibit 13 and specifically this memo from
13 Mr. Stinson to the members of the Belt Line Board,
14 dated August 5, 2010, do you remember receiving this
15 memo from Mr. Stinson at the time?

16 A. Vaguely, yes.

17 Q. All right. Is this one of the documents
18 you reviewed in preparation for your deposition
19 today?

20 A. I'm not sure that I reviewed this one,
21 per se, versus the original proposal that we sent
22 over. It's possible that was one of the documents.
23 But I don't recall that.

24 Q. Okay. The first page of Mr. Stinson's
25 memo to the board, about midway down, it has an

1 article that says -- I mean, I'm sorry -- a
2 paragraph that says "First, Article Ninth of the
3 operating agreement of July 7, 1897, between NPBL's
4 owners requires that freight rates be uniform. As
5 proposed by CSXT, the handling of interchange
6 traffic on the basis of a per-container rate would
7 violate the terms of the operating agreement.
8 Either the shareholders would need to amend the
9 agreement or approve an exception to its terms."

10 As a member of the Belt Line Board, did
11 you agree with the statement in Mr. Stinson's memo?

12 A. I fully agreed. We were more than willing
13 to offer the same agreement with Norfolk -- to
14 Norfolk Southern.

15 Q. What do you mean?

16 A. Meaning that if they -- we fully respected
17 the uniform rate principle. When the original
18 charter was set up, intermodal was not in existence.
19 It was another 50, 60 years until intermodal came
20 up.

21 And the idea of uniform for intermodal
22 trains versus containers or versus individual
23 carloads was always something not well contemplated
24 on that point.

25 But we were not trying to have a rate that